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Attorneys for Plaintiff: PATRICIA FILARDI

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - EASTERN DIVISION

PATRICIA FILARDI, an individual,

Plaintiff,

v.

MCDONALD’S, a business of
unknown form; THE PRICE REIT,
INC., a Maryland Corporation; and
DOES 1-10, inclusive,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For:**

- 1. VIOLATIONS OF THE
AMERICANS WITH DISABILITIES
ACT OF 1990, 42 U.S.C. §12181 *et*
*seq.***
- 2. VIOLATIONS OF THE UNRUH
CIVIL RIGHTS ACT, CALIFORNIA
CIVIL CODE § 51 *et seq.***

Plaintiff, PATRICIA FILARDI (“Plaintiff”), complains of Defendants
MCDONALD’S, a business of unknown form; THE PRICE REIT, INC., a
Maryland Corporation; and DOES 1-10 (“Defendants”) and alleges as follows:

PARTIES:

1. Plaintiff PATRICIA FILARDI is an adult quadriplegic who uses a

1 wheelchair for mobility. She has a specially equipped van with a ramp that deploys
2 out of the passenger side of her van. Plaintiff is substantially limited in performing
3 one or more major life activities, including but not limited to: walking, standing,
4 sleeping, ambulating, and/or sitting. Plaintiff requires the use of a wheelchair at all
5 times for mobility and life functions. At the time of Plaintiff's visits to Defendant's
6 facility and prior to instituting this action, Plaintiff suffered from a "qualified
7 disability" under the ADA. She has a Disabled Person Parking Placard issued to her
8 on a permanent basis.

9 2. Plaintiff brings this action acting as a "private attorney general" as
10 permitted under the American with Disabilities Act of 1990 ("ADA") to privatize
11 enforcement of the ADA without the American tax payer(s) bearing the financial tax
12 burden for such action.

13 3. Defendant THE PRICE REIT, INC., a Maryland Corporation, owned
14 the property located at 400 McKinley Street, Corona, CA 92879 ("Property") on
15 February 20, 2018.

16 4. Defendant THE PRICE REIT, INC., a Maryland Corporation, owns the
17 Property currently.

18 5. Defendant MCDONALD'S, a business of unknown form, owned,
19 operated and controlled the business of MCDONALD'S, a business of unknown
20 form, ("Business") on February 20, 2018.

21 6. Defendant Owner MCDONALD'S, a business of unknown form, owns,
22 operates and controls the Business currently.

23 7. Plaintiff does not know the true names of Defendants, their business
24 capacities, their ownership connection to the Property and Business, or their relative
25 responsibilities in causing the access violations herein complained of, and alleges a
26 joint venture and common enterprise by all such Defendants. Plaintiff is informed
27 and believes that each of the Defendants herein, including Does 1 through 10,
28 inclusive, is responsible in some capacity for the events herein alleged, or is a

1 necessary party for obtaining appropriate relief. Plaintiff will seek leave to amend
2 when the true names, capacities, connections, and responsibilities of the Defendants
3 and Does 1 through 10, inclusive, are ascertained.

4 **JURISDICTION AND VENUE**

5 8. This Court has subject matter jurisdiction over this action pursuant
6 to 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans
7 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq. ("ADA").

8 9. This court has supplemental jurisdiction over Plaintiff's non-federal
9 claims pursuant to 28 U.S.C. § 1367, because Plaintiff's UCRA claims are so
10 related to Plaintiff's federal ADA claims in that they have the same nucleus of
11 operative facts and arising out of the same transactions, they form part of the same
12 case or controversy under Article III of the United States Constitution.

13 10. Venue is proper in this court pursuant to 28 U.S.C. §1391 because the
14 Property which is the subject of this action is located in this district and because
15 Plaintiff's causes of action arose in this district.

16 **FACTUAL ALLEGATIONS**

17 11. Plaintiff went to the Business on or about February 20, 2018, to get
18 lunch.

19 12. The Business, including the Property, is a facility open to the public, a
20 place of public accommodation, and a business establishment.

21 13. Parking spaces are some of the facilities, privileges and advantages
22 reserved by Defendants to persons patronizing the Business and Property.

23 14. Unfortunately, although parking spaces were some of the facilities
24 reserved for patrons, there were barriers for persons with disabilities that cause the
25 named facilities to fail as to compliance with the Americans with Disability Act
26 Accessibility Guidelines ("ADAAG") on or around February 20, 2018, or at any
27 time thereafter up to and including, the date of the filing of this complaint.

28 15. Instead of having architectural barrier free facilities for patrons with

1 disabilities, Plaintiff experienced the following at the Business and Property: the
2 curb ramp at the accessible parking space serving the front entrance projects into the
3 parking space access aisle in violation of Section 406.5. Therefore, currently, there is
4 no compliant designated disabled parking serving the Business which is designed for
5 persons with disabilities.

6 16. Subject to the reservation of rights to assert further violations of law
7 after a site inspection found *infra*, Plaintiff asserts there are additional ADA
8 violations which affects her personally.

9 17. Plaintiff is informed and believes and thereon alleges that, currently,
10 there are no compliant, accessible Business facilities designed, reserved and
11 available to persons with disabilities at the Business in addition to that alleged *supra*.

12 18. Plaintiff is informed and believes and thereon alleges that Defendants
13 had no policy or plan in place to make sure that the parking spaces were compliant
14 for persons with disabilities and remained compliant prior to February 20, 2018.

15 19. Plaintiff is informed and believes and thereon alleges Defendants have
16 no policy or plan in place to make sure that the complaints of violations alleged
17 above are available to persons with disabilities and remain compliant currently.

18 20. Plaintiff personally encountered the above alleged barriers when
19 attempting to access the Business and Property. These inaccessible conditions
20 denied the Plaintiff full and equal access and caused her difficulty, humiliation,
21 frustration and upset.

22 21. As an individual with a mobility disability who at times is dependent
23 upon a mobility device, Plaintiff has a keen interest in whether public
24 accommodations have architectural barriers that impede full accessibility to those
25 accommodations by individuals with mobility impairments.

26 22. Plaintiff is being deterred from patronizing the Business and its
27 accommodations on particular occasions, but intends to return to the Business for the
28 dual purpose of availing herself of the goods and services offered to the public and

1 to ensure that the Business ceases evading its responsibilities under federal and state
2 law.

3 23. As a result of her difficulty, humiliation, frustration and upset because
4 of the inaccessible condition of the facilities of the Business, Plaintiff did not fully
5 access the Business or Property. However, Plaintiff would like to return with her
6 disabled fiancé to the location given its close proximity to an area she frequents from
7 time to time.

8 24. The Defendants have failed to maintain in working and useable
9 conditions those features required to provide ready access to persons with
10 disabilities.

11 25. The violations identified above are easily removed without much
12 difficulty or expense. They are the types of barriers identified by the Department of
13 Justice as presumably readily achievable to remove and, in fact, these barriers are
14 readily achievable to remove. Moreover, there are numerous alternative
15 accommodations that could be made to provide a greater level of access if complete
16 removal were not achievable.

17 26. Plaintiff and her disabled fiancé are being deterred from patronizing the
18 Business and its accommodations on particular occasions, but intend to return to the
19 Business for the dual purpose of availing themselves of the goods and services
20 offered to the public and to ensure that the Business ceases evading their
21 responsibilities under federal and state law.

22 27. Given the obvious and blatant violation alleged hereinabove, Plaintiff
23 alleges, on information and belief, that there are other violations and barriers in the
24 site that relate to her disabilities. Plaintiff will amend the complaint, to provide
25 proper notice regarding the scope of this lawsuit, once she conducts a site inspection.
26 However, please be on notice that Plaintiff seeks to have all barriers related to their
27 disabilities remedied. See *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding
28 that once a plaintiff encounters one barrier at a site, she can sue to have all barriers

1 that relate to her disability removed regardless of whether she personally
2 encountered them).

3 28. Given the obvious and blatant violation alleged hereinabove, Plaintiff
4 alleges, on information and belief, that the failure to remove these barriers was
5 intentional because: (1) these particular barriers are intuitive and obvious; (2) the
6 defendants exercised control and dominion over the conditions at this location, and
7 therefore, (3) the lack of accessible facilities was not an accident because had the
8 defendants intended any other configuration, they had the means and ability to make
9 the change.

10 29. Without injunctive relief, plaintiff will continue to be unable to fully
11 access Defendants' facilities in violation of Plaintiff's rights under the ADA.

12 **FIRST CAUSE OF ACTION**

13 **VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT OF 1990,**

14 **42 U.S.C. § 12181 et seq.**

15 30. Plaintiff re-alleges and incorporates by reference all paragraphs alleged
16 above and each and every other paragraph in this Complaint necessary or helpful to
17 state this cause of action as though fully set forth herein.

18 31. Under the ADA, it is an act of discrimination to fail to ensure that the
19 privileges, advantages, accommodations, facilities, goods, and services of any place
20 of public accommodation are offered on a full and equal basis by anyone who owns,
21 leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a).
22 Discrimination is defined, inter alia, as follows:

- 23 a. A failure to make reasonable modifications in policies, practices,
24 or procedures, when such modifications are necessary to afford
25 goods, services, facilities, privileges, advantages, or
26 accommodations to individuals with disabilities, unless the
27 accommodation would work a fundamental alteration of those
28 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

- 1 b. A failure to remove architectural barriers where such removal is
2 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
3 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
4 Appendix "D".
- 5 c. A failure to make alterations in such a manner that, to the
6 maximum extent feasible, the altered portions of the facility are
7 readily accessible to and usable by individuals with disabilities,
8 including individuals who use wheelchairs, or to ensure that, to
9 the maximum extent feasible, the path of travel to the altered area
10 and the bathrooms, telephones, and drinking fountains serving
11 the area, are readily accessible to and usable by individuals with
12 disabilities. 42 U.S.C. § 12183(a)(2).

13 32. Any business that provides parking spaces must provide accessible
14 parking spaces. 1991 Standards § 4.1.2(5). 2010 Standards § 208. Under the 1991
15 Standards, parking spaces and access aisles must be level with surface slopes not
16 exceeding 1:50 (2.0%) in all directions. 1991 Standards § 4.6.2. Under the 2010
17 Standards, access aisles shall be at the same level as the parking spaces they serve.
18 Changes in level are not permitted. 2010 Standards § 502.4. "Access aisles are
19 required to be nearly level in all directions to provide a surface for wheelchair
20 transfer to and from vehicles." 2010 Standards § 502.4 Advisory. Specifically, built
21 up curb ramps are not permitted to project into access aisles and parking spaces. *Id.*
22 No more than a 1:48 slope is permitted. Standards § 502.4.

23 33. Here, the failure to ensure that accessible facilities were available and
24 ready to be used by Plaintiff is a violation of law.

25 34. A public accommodation must maintain in operable working condition
26 those features of its facilities and equipment that are required to be readily accessible
27 to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

28 35. Given its location and options, Plaintiff will continue to desire to

patronize the Business but she has been and will continue to be discriminated against due to lack of accessible facilities and, therefore, seek injunctive relief to remove the barriers.

SECOND CAUSE OF ACTION

VIOLATION OF THE UNRUH CIVIL RIGHTS ACT, CALIFORNIA CIVIL CODE § 51 *et seq.*

36. Plaintiff re-alleges and incorporates by reference all paragraphs alleged above and each and every other paragraph in this Complaint necessary or helpful to state this cause of action as though fully set forth herein.

37. California Civil Code § 51 *et seq.* guarantees equal access for people with disabilities to the accommodations, advantages, facilities, privileges, and services of all business establishments of any kind whatsoever. Defendants are systematically violating the UCRA, Civil Code § 51 *et seq.*

38. Because Defendants violate Plaintiff's rights under the ADA, they also violated the Unruh Civil Rights Act and are liable for damages. (Civ. Code § 51(f), 52(a).) These violations are ongoing.

39. Defendants' actions constitute intentional discrimination against Plaintiff on the basis of their individual disabilities, in violation of the UCRA, Civil Code § 51 *et seq.* Plaintiff is informed and believes and thereon alleges Defendants have been previously put on actual notice that its premises are inaccessible to Plaintiff as above alleged. Despite this knowledge, Defendants maintain the Property and Business in an inaccessible form.

PRAYER

WHEREFORE, Plaintiff prays that this court award damages provide relief as follows:

1. A preliminary and permanent injunction enjoining Defendants from further violations of the ADA, 42 U.S.C. § 12181 *et seq.*, and UCRA, Civil Code § 51 *et seq.* with respect to its operation of the Business and Subject Property; **Note:**

1 **Plaintiff is not invoking section 55 of the California Civil Code and is not**
2 **seeking injunctive relief under the Disable Persons Act at all.**

3 2. An award of actual damages and statutory damages of not less than
4 \$4,000 per violation pursuant to § 52(a) of the California Civil Code and \$4,000 for
5 each time she visits an establishment that contains architectural barriers that deny the
6 Plaintiff of full and equal enjoyment of the premises (*Feezor v. Del Taco, Inc.*
7 (2005) 431 F.Supp.2d 1088, 1091.)

8 3. An additional award of \$4,000.00 as deterrence damages for each
9 violation pursuant to *Johnson v. Guedoir*, 218 F. Supp. 3d 1096; 2016 U.S. Dist.
10 LEXIS 150740 (USDC Cal, E.D. 2016);

11 4. For reasonable attorneys' fees, litigation expenses, and costs of suit,
12 pursuant to 42 U.S.C. § 12205; California Civil Code § 52;

13 **DEMAND FOR JURY TRIAL**

14 Plaintiff hereby respectfully request a trial by jury on all appropriate issues
15 raised in this Complaint.

16
17 Dated: June 29, 2018

MANNING LAW, APC

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19 By: /s/ Joseph R. Manning Jr., Esq. _____

20 Joseph R. Manning Jr., Esq.

21 Michael J. Manning, Esq.

22 Craig G. Côté, Esq.

23 Attorneys for Plaintiff
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